



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

June 7, 1955

Senator Dorsey B. Hardeman  
Chairman, State Affairs Committee  
State of Texas  
Austin, Texas

Letter Opinion No. MS-220

Re: Constitutionality of Senate  
Bill 334, 54th Legislature,  
regulating practical nursing.

Dear Senator Hardeman:

Senate Bill 334 provides for the licensing of practical nurses by the State Board of Health. The Board is given authority to regulate schools providing training for practical nurses, and is further authorized to revoke licenses granted to such schools or to practical nurses for certain stated reasons. At the direction of the Senate State Affairs Committee you have requested the opinion of this office as to the constitutionality of Senate Bill 334.

This office has given careful consideration to Senate Bill 334 and advises you that it violates no provision of our Texas Constitution. In Section 15 of the Bill the provisions for notice, hearing and appeal are not specifically spelled out. In such circumstances our Texas Courts will look to the subsequent action which the State Board of Health takes in the procedure in each revocation. It is elementary that the Board must allow due process to all parties before acting to deprive any person of rights acquired under the Bill. As stated by our Supreme Court:

"An administrative agency, though vested with discretion in its acts, must not exercise its powers arbitrarily or capriciously, and the reasonableness of its orders is, and under our system of government must be subject to judicial review." Fire Department of City of Fort Worth v. City of Fort Worth, 147 Tex. 505, 217 S.W.2d 664, 666 (1949).

In the same case the Court said:

"It is generally recognized that even without express statutory authorization the orders entered by the administrative body pursuant to legislative sanction are subject to judicial review." See also White v. Bolner, 223 S.W.2d 686 (Tex.Civ.App. 1949, error ref.)

APPROVED:

J. C. Davis, Jr.  
County Affairs

John Reeves  
Reviewer

B. Duncan Davis  
Reviewer

Robert S. Trotti  
First Assistant

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
Billy E. Lee  
Assistant